

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Bowen Analyst: Roger Lackey Bill Number: SB 1016

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 05-11-99

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Employee Records/Prohibits Employers From Secretly Monitoring Employees E-Mail Or Other Personal Computer Records

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 15, 1999 STILL APPLIES.

OTHER - See comments below.

### SUMMARY OF BILL

This bill would provide that an employer may not secretly monitor the electronic mail or any other personal computer records generated by an employee.

This bill would provide that an employer who intends to inspect, review, or retain any personal electronic mail or any other personal computer records must notify its employees of its electronic monitoring policies and practices and require its employees to sign a statement acknowledging that the employee has read, understood, and agrees to the employer's electronic monitoring policies and practices.

### SUMMARY OF AMENDMENT

The May 11, 1999, amendment deleted language that would have prohibited an employer accessing an employee's personal electronic mail or any other computer records from continuing to inspect, review, or retain that information once the information is identified as personal information.

The April 27, 1999, amendment added the provision that was discussed above and also required that the employer's workplace privacy and electronic monitoring policies and practices provisions ensure an employee's right to review any data pertaining to the employee as provided by Section 1198.5 of the Labor Code. Since Labor Code Section 1198.5(e) provides that this particular section of law does not apply to state agencies, this provision of the bill would not apply to state agencies.

### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> X PENDING

Department/Legislative Director Date

**Johnnie Lou Rosas 5/21/1999**

As a result of the May 11, 1999, and April 27, 1999, amendments, an additional implementation concern has been included below.

Also, the implementation concerns identified in the department's analysis of SB 1016 as amended April 15, 1999, are provided below.

#### Implementation Considerations

This bill would ensure an employee's right to review any data pertaining to the employee, as provided for in Labor Code Section 1198.5. However, paragraph (e) of Section 1198.5 of the Labor Code provides that this particular section of law does not apply to state agencies. It is unclear whether the author intended to make distinctions between types of employers.

Upon providing an employee notice of the policies and practices of the employer, the employer would be required to obtain from the employee verification that the employee has read, understood, and agrees to those policies and practices. Requiring an employee to agree could be interpreted as a condition of employment that would seem to conflict with the intent of the bill and, upon implementation, could lead to difficulties and confusion for the employer and employee. Removing the agreement requirement from the language of the bill would eliminate possible disputes between employers and employees.

FTB is very sensitive to the need to protect the confidentiality of the information handled by its employees, and the department has established specific rules of conduct, in accordance with state law, relating to the activities and actions of the department's officers and employees. Upon employment with the FTB and annually, officers and employees are required to sign a "Statement of Incompatible Activities and Rules of Conduct for Departmental Employees." Under this bill, a similar type of statement could be used as consent to access employee's computer records, etc., if the department found it necessary. The time allowed to develop the statement and ensure that it is signed by every employee should not significantly impact the department.

#### Board Position

Pending.